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2439	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
	10/734,802	CHESS ET AL.
Office Action Summary	Examiner	Art Unit	
	JAMES TURCHEN	2439	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>20 November 2008</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-17</u> is/are pending in the application.

  4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-17</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

  a)☐ All   b)☐ Some * c)☐ None of:

  1.☐ Certified copies of the priority documents have been received.

  2.☐ Certified copies of the priority documents have been received in Application No. _____.

  3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

  * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Claims 1-17 are pending. Claim 1 is amended.

Response to Arguments

Applicant's arguments with respect to claims 1-17 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: said new server configuration being associated in said table with said value of said counter such that a particular configuration of said new server configuration depends on the total number of times that said first server has been a victim of a security assault <u>or possible security</u> <u>assault</u>. The configuration depending on the counter and the counter is incremented upon being a victim of a security assault or a possible security assault according to the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

applicant for patent, except that an international application filed under the treaty defined in section
351(a) shall have the effects for purposes of this subsection of an application filed in the United States
only if the international application designated the United States and was published under Article 21(2)
of such treaty in the English language.

Claims 1-11 and 13-17 are rejected under 35 U.S.C. 102(e) as being anticipated

by Smithson et al. (US 6,898,715) hereafter Smithson.

Regarding claim 1:

Smithson discloses a method for automated adaptive reprovisioning of servers

under security assault, the method comprising:

detecting a security assault or a possible security assault on a first server [*Figure

4 and column 5 lines 15-47*];

incrementing a counter that tracks a total number of times that the first server has

been victim of a security assault or a possible security assault [*figure 5 and column 5

line 48-column 6 line 16, it is inherent in the predefined sequence that there would be a

counter to keep track of which step will be processed next*];

notifying a human operator if a value of said counter exceeds a maximum limit

[*column 9 lines 1-7*]; and

reprovisioning by automatically creating a new server instance with a new server

configuration to perform at least one of the tasks performed by said first server, if said

value of said counter does not exceed the maximum limit [*column 5 line 48-column 7

line 13 and figure 5, each execution of a step is considered by examiner to be a new

server instance as the instance is different from the previous instance and did not exist

prior to execution of the step*], wherein said new server configuration for said new server

instance is selected from a table comprising a plurality of new server configurations,

said new server configuration being associated in said table with said value of said

counter such that a particular configuration of said new server configuration depends on

the total number of times that said first server has been victim of a security assault

[*figure 5, the table consists of the steps and the action(s) to be taken at each step*].

Regarding claim 2:

Smithson discloses the method of claim 1, wherein said detecting comprises

determining if said first server is a candidate for reprovisioning, because of properties or

behavior that suggest its security has been compromised or is likely to be compromised,

or its functioning otherwise unacceptably impaired, by a security assault [*column 4 lines*

37-column 5 line 14].

Regarding claim 3:

Smithson discloses the method of claim 1, wherein said reprovisioning comprises

automatically bringing up said new server instance, or otherwise making available said

new server instance to customers or other users of said first server [*column 5 lines 58-*

63].

Regarding claim 4:

Smithson discloses the method of claim 1, further comprising bringing down said

first server prior to said reprovisioning [*column 7 lines 7-13*].

Regarding claim 5:

Smithson discloses the method of claim 1, wherein said new server instance

brought up in said reprovisioning differs from said first server in at least one parameter

[column 6 line 12-column 7 line 13].

Regarding claim 6:

Smithson discloses the method of claim 1, wherein a difference between said new server instance and said first server is responsive to whether or not other security incidents have been detected in a network to which said servers are coupled [*column 4 lines 25-65*].

Regarding claim 7:

Smithson discloses the method of claim 1, wherein a difference between said new server instance and said first server is responsive to a nature of any other security incidents that have been detected in a network to which said servers are coupled [column 4, lines 25-65].

Regarding claim 8:

Smithson discloses the method of claim 1, wherein a difference between said new server instance and said first server is responsive to a probable compromise or a functional impairment observed in said detection [*column 4 lines 25-65*].

Regarding claim 9:

Smithson discloses the method of claim 1, wherein a difference between said new server instance and said first server includes a version of server software used by said servers [*column 4 line 66-column 5 line 14, it is inherent that Microsoft Exchange Server includes a version of server software*].

Regarding claim 10:

Smithson discloses the method of claim 1, wherein a difference between said new server instance and said first server includes a version of operating system

software used by said servers [*column 4 line 66-column 5 line 14, it is inherent that Microsoft Exchange Server runs on Microsoft operating systems and includes a version of operating system software*].

Regarding claim 11:

Smithson discloses the method of claim 1, wherein a difference between said new server instance and said first server includes a version of network connectivity software used by said servers [*column 3 line 65-column 4 line 17, it is inherent that the network links contain versions of network connectivity software*].

Regarding claim 13:

Smithson discloses the method of claim 1, wherein a difference between said new server instance and said first server includes a degree of function offered to users by said servers [*column 6 line 12-column 7 line 13*].

Regarding claim 14:

Smithson discloses the method of claim 1, wherein said new server instance brought up in said reprovisioning differs from said first server only if more than a fixed number of instances of probable server compromise have been observed [*column 4 lines 24-65*].

Regarding claim 15:

Smithson discloses the method of claim 1, wherein a difference between said new server instance and said first server is responsive to a number of probable server compromises that have been observed [column 4 lines 24-65].

Regarding claim 16:

Smithson discloses the method of claim 1, wherein said first server comprises a

computer providing services through a network [column 3 lines 32-44].

Regarding claim 17:

Smithson discloses the method of claim 1, wherein said first server comprises a

program running on a network-coupled computer, providing services through a network

[*column 3 line 65-column 4 line 23*].

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Smithson.

Smithson discloses the method of claim 1, but does not disclose wherein a

difference between said new server instance and said first server includes a strength of

encryption used by said servers. Examiner takes official notice that encryption and

various strengths of encryption were well known in the art. All the claimed elements

were known in the prior art and it would have been obvious to one skilled in the art to

combine the elements as claimed by known methods with no change in their respective

functions, and the combination would have yielded predictable results to one of ordinary

skill in the art at the time of invention.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES TURCHEN whose telephone number is (571)270-1378. The examiner can normally be reached on MTWRF 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Zand can be reached on (571)272-3811. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JRT

/Kambiz Zand/
Supervisory Patent Examiner, Art Unit 2434